IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO.1457 OF 2005
WITH
CIVIL APPLICATION NO.3626 OF 2005

M/s. Vak Enterprises. ...Appellant.

Versus

The Regional Director & Anr. ...Respondents.

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Mr. P. M. Palshikar with Mr. Vinod Jawale for the Appellant.
Mr. H. V. Mehta for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 17, 2005.

P.C.:

This appeal is directed against a judgment and order dated 25th April 2005 of the Employees' Insurance Court at Mumbai, in an application under Sections 75 and 76 of the Employees' State Insurance Act, 1948 ("the Act)". The appellant moved the ESI Court upon receipt of an order under Section 45A of the Act together with a recovery certificate and notice of recovery.

The appellant is a partnership firm which carries on business at Unit No.348 at Pragati Industrial Estate, N. M. Joshi Marg, Mumbai-400 013. There is another establishment by the name of A1 Plast. The ESI Corporation issued a notice on 6th March 1986 calling upon the Appellant to pay a contribution of Rs.35,831.20 which was determined an on ad-hoc basis for the period from 28th August 1982 to 28th February 1986. In holding that dues were liable to be recovered under the provisions of the Act, the Respondent has considered the total strength of two establishments viz., the Appellant and of A1 Plast which is a proprietary concern. Since the total strength of employees working in the two establishments is 22 and the work in the establishment of A1 Plast was being carried on with the aid of power, it was held that the provisions of the Act are attracted.

The Appellant disputed the application of the Act before the ESI Court. The application was disposed of by the impugned judgment dated 26th April 2005. The ESI Court has in its impugned order noted that one of the partners of the Appellant herein is the

spouse of the sole proprietor of A1 Plast. The Appellant carries on business in Gala No.348, whereas the business of A1 Plast is being carried on in Gala No.317 in the same Industrial Estate. A1 Plast carries on the business of moulding plastic articles on machines with the aid of power. The moulded plastic articles are stated to be collected by the Appellant and the work of assembling is carried on by the Appellant. Apart from these circumstances, which were sought to be established on the basis of the report of the Inspector who visited the site, the ESI Court noted that the visit note recording the names of 22 persons had been signed by the proprietor of A1 Plast who is the spouse of one of the partners of the Appellant. Neither the Appellant nor the Respondent led any oral evidence before the ESI Court.

Counsel appearing on behalf of the Appellant has submitted that the Appellant has already deposited 50% amount of the amount of the recovery certificate before the Respondent-Corporation and that the Appellant is ready and willing to deposit the balance within a period of two weeks from today. However, it is submitted that the Appellant should be granted an opportunity of leading evidence. It is

submitted that there is no functional integrality between the two Units and having regard to the well settled position in law, the mere fact that one of the partners of the Appellant is a spouse of the sole proprietor of another Unit in the Industrial Estate would not establish functional integrality. The other circumstance which has been relied upon is that the articles moulded by A1 Plast are assembled in the premises of the Appellant herein. Whether this by itself would establish functional integrality would have to be considered in the light of other facts and circumstances, having regard to the well settled tests laid down in decided cases. I am of the view that having regard to the issues which arise, it would be appropriate and proper if the appellant is allowed to lead evidence to controvert the allegation of functional integrality between the two Units. The Appellant is stated to have deposited 50% of the recovery certificate before the Respondent. The Appellant shall deposit the balance within a period of two weeks. Conditional on such deposit being made, the impugned order of the ESI Court shall stand quashed and set aside and the application filed by the Appellant shall stand remitted back to the ESI Court for fresh determination. In that event, the Appellant shall file its affidavit in lieu

of Examination-in-Chief before the ESI Court within a period of four weeks from the date of deposit. The Respondent shall also be at liberty to produce such evidence as it may be advised before the ESI Court. The ESI Court shall dispose of the proceedings on remand within a period of six months thereafter. The appeal is accordingly disposed of.

In view of the disposal of the appeal, the Civil Application is rendered infructuous and is accordingly disposed of.

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